

FCC MAIL SECTION

Federal Communications Commission

DA 99-2422

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Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 99-326
Table of Allotments,)	RM-9755
FM Broadcast Stations.)	
(Bowling Green and Bardstown, Kentucky))	

NOTICE OF PROPOSED RULE MAKING

Adopted: October 27, 1999;

Released: November 5, 1999

Comment Date: December 27, 1999

Reply Comment Date: January 11, 2000

1. The Commission has before it the petition for rule making filed by WRUS, Inc. ("petitioner"), licensee of Station WBVR-FM, Channel 244A, Bowling Green, Kentucky, proposing the substitution of Channel 244C3 for Channel 244A at Bowling Green, and the modification of Station WBVR-FM's license accordingly. To accommodate the upgrade, petitioner also requests the substitution of Channel 297A for Channel 244A at Bardstown, Kentucky, and the modification of Station WOKH(FM)'s license accordingly¹. Petitioner states its intention to apply for the channel, if allotted.

2. We believe that the proposal warrants consideration since the proposed upgrade would allow Station WBVR-FM at Bowling Green, Kentucky, to expand its service area. An engineering analysis has determined that Channel 244C3 can be allotted to Bowling Green in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.1 kilometer (9.4 miles) west at petitioner's requested site.² To accommodate the upgrade, we also propose the substitution of Channel 297A for Channel 244A at Bardstown, Kentucky. Additionally, Channel 297A can be allotted to Bardstown with a site restriction of 11.8 kilometers (7.4 miles) west at petitioner's requested site.³ As requested, we will propose to modify Station WBVR-FM's license to specify operation on Channel 244C3 at Bowling Green, Kentucky, and modify Station WOKH(FM)'s license to specify operation on Channel 297A at Bardstown, Kentucky. In accordance with Section 1.420(g)(3) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 244C3 at Bowling Green, Kentucky, or

¹Station WOKH(FM) presently operates on Channel 244A at Bardstown, Kentucky. CBC of Nelson County, Inc., filed an application (File No. BPH-990601IG) for a construction permit to change to Channel 297A, and to modify its transmitter site. The application was dismissed on September 3, 1999, so that Station WOKH(FM)'s request could be considered in the context of the instant rule making proceeding.

²The coordinates for Channel 244C3 at Bowling Green are 37-01-33 North Latitude and 86-37-06 West Longitude.

³The coordinates for Channel 297A at Bardstown are 37-47-00 North Latitude and 85-35-28 West Longitude.

require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

3. Commission policy requires reimbursement to affected stations for the reasonable costs associated with changing frequencies. See Circleville and Columbus, Ohio, 8 FCC 2d 159 (1967). CBC of Nelson County, Inc., licensee of Station WOKH(FM), has consented to the channel change and to the relocation of its transmitter site. Since Station WOKH(FM) had originally filed a one-step application requesting the channel change reflected in this proposal, the Commission's reimbursement requirement for costs associated with changing frequencies is not applicable. Moreover, the issuance of an Order to Show Cause is not necessary since Station WOKH(FM) has consented to the requested changes.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Bowling Green, Kentucky	227C3, 244A, ⁴	227C3, 244C3
Bardstown, Kentucky	244A	297A

5. IT IS ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this Notice of Proposed Rule Making to the following:

Michael H. Sacter, Esq.
Pepper & Corazzini, L.L.P.
1776 K Street, N.W., Suite 200
Washington, D.C. 20006-2334

CBC of Nelson County, Inc.
P.O. Box 457
Glasgow, Kentucky 42141

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **December 27, 1999**, and reply comments on or before **January 11, 2000**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as

⁴We note that Station WBVR-FM was issued a construction permit (File No. BPH-910918ID) for Channel 244C3 in MM Docket No. 90-447, which on October 7, 1993, was cancelled and forfeited. On November 24, 1993, Station WBVR-FM filed an application (File No. BPH-931124IE) to downgrade to Channel 244A, which was granted on April 1, 1994. The FM Table of Allotments erroneously still reflects Channel 244C3 at Bowling Green, Kentucky.

follows:

Allan G. Moskowitz, Esq.
Keye, Scholer, Fierman, Hays & Handler, LLP
901 15th Street, N.W., Suite 1100
Washington, D.C. 20005
(Counsel for Petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 F 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 12th Street, S.W, Washington, D.C.